

**Inquiry into the Independent National Security
Legislation Monitor (Improved Oversight and
Resourcing) Bill 2014.**



**SUBMISSIONS TO THE SENATE LEGAL AND
CONSTITUTIONAL AFFAIRS COMMITTEE**

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1. Introduction

1.1 The Muslim Legal Network (NSW) welcomes the opportunity to provide submissions for the Inquiry into the Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014 (the Inquiry) and thank the Senate Legal and Constitutional Affairs Legislation Committee for the opportunity

1.2 Since July 2014, there have been significant changes to counter terrorism legislation in Australia. Throughout this period, the Muslim Legal Network (NSW) has expressed extreme concern at the haste and rate that these laws, which carry significant implications for human rights in Australia, have been passed. These include lowering the threshold required to obtain various warrants, expanding the scope of control orders and criminalising the mere travel of Australian citizens to certain areas. These laws are of particular concern to the Australian Muslim community as they had had a disproportionate effect and impact on that community.

1.3 Whilst we remain in the early stages of assessing the practical implications of these laws on the lives of ordinary Australian citizens and their effectiveness, we have already seen large-scale and highly publicised raids conducted by Counter Terrorism Police. They have resulted in very few charges being laid against persons of interest and even fewer charges relating to terrorism being laid. Whilst we do not seek to minimise the extreme and senseless violence of militants of Daish (more commonly known as Islamic State), we do however

uphold that the response be both effective and proportionate to any such threat. Without an effective Independent National Security Legislation Monitor (hereafter the 'INSLM'), we are concerned that there would be no meaningful review mechanism of these laws.

1.4 The functions of the INSLM are to review the operation, effectiveness and implications of counter terrorism and national security legislation or any other law that relates to it. In particular, whether such legislation contains appropriate safeguards for protecting the rights of individuals, whether it remains proportionate to any threat of terrorism or threat to national security and whether it remains necessary.

1.5 The need for the INSLM was identified in previous parliamentary inquiries and public hearings. The INSLM was established to overcome the ineffective level of oversight in other review mechanisms,¹ It is within this context that the role of the INSLM has become even more necessary. The Muslim Legal Network (NSW) has been disappointed and concerned at the Federal Government's previous plans to abolish the INSLM (which were subsequently abandoned) and the fact that the position has remained vacant since April 2014 – months before some of the most significant changes in a decade to counter terrorism and national security legislation in this country were implemented. Throughout this time, the

¹ The Sheller Committee Recommendations, the Parliamentary Joint Committee on Intelligence and Security's report *Review of Security and Counter Terrorism Legislation* on 4 December 2006 and the Clarke inquiry into the case of Dr Mohamed Haneef where the Hon John Clark QC recommended the position of an independent reviewer of counter terrorism and national security legislation.

Australian public did not have the benefit of an INSLM scrutinizing the effectiveness, proportionality and necessity of the changes.

1.6 We agree with the majority of the sought amendments in the Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014. As counter terrorism and national security legislation is and will continue to react and respond to international events and conflicts, the need for continual review and scrutiny of such legislation due to its nature is a necessary safeguard against the undue violation of human rights in Australia. Furthermore, as the INSLM has immense information gathering powers and is privy to classified material, the position also assists in providing public confidence that the laws are necessary, effective and proportionate to any national security concerns.

2 The addition of Section 6(1)(e) – allowing the Australian Human Rights Commission to refer a matter to the INSLM and requiring the INSLM to issue a report in response.

The addition of Section 7B – allowing the Legal and Constitutional Affairs Committee to refer matters to the INSLM

2.1 We agree that it is problematic that it is only the Prime Minister and the Parliamentary Joint Committee on Intelligence and Security that can refer matters to the INSLM as it restricts his or her independence. Expanding these rights to the AHRC will allow minority groups to make complaints to the AHRC in relation

to the practical implications of these laws. It will then allow the AHRC to further investigate these complaints and forward to the INSLM only when appropriate. This will streamline the concerns that ordinary Australians may have in relation to the practical implications of these laws by limiting the power of referral to the AHRC. Whilst Section 6 of the INSLM Act grants power to the INSLM to review matters at his or her own initiative, expanding the power of referral to the AHRC allows minority groups to bring attention to the practical implications of these laws with the INSLM.

2.2 We also agree that this power should be extended to the Legal and Constitutional Affairs Committee as it is regularly involved in assessing proposed and existing counter terrorism and national security legislation.

3 Allowing the INSLM to review proposed legislation as well as existing legislation.

3.1 We agree with this amendment. As the INSLM has immense information gathering powers and is privy to classified material, the position will benefit the public in assessing whether any proposed laws are necessary, effective and proportionate to any national security concerns.

4 Amendments to sections 11(1) and (2) –vacancy of position – increasing the role of INSLM to a full time position.

4.1 We agree with the amendments to increasing the position of INSLM from a part time position to full time. However, if there is difficulty in obtaining an appropriately qualified INSLM on a full time basis, consideration should be given

to allowing two INSLM to share the positions on a part time basis.

4.2 We agree with the inclusion of Section 2A. This is necessary to ensure that the position of INSLM is not vacant for a prolonged period of time.

5 Sections 29(5) and 30 – Requirement that the Prime Minister respond to reports by the INSLM.

5.1 We have been disappointed that the findings and recommendations of the previous INSLM in his detailed four reports have been mostly ignored by the Federal Government. The importance and pertinence of the role of the INSLM in the current political climate. It is also important that this role is not of symbolic value only. If there is no response required by the Government to the INSLM's findings and recommendations, his or her role becomes ineffective in achieving it's functions.

5.2 Therefore, we agree with the addition of Sections 29(5) and 30 of the INSLM Act.